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ABSTRACT

Part one of this report describes a serious political restraint on communication regarding government affairs: Executive Order 11652, which provides for the classification and declassification of national security information. Although this order was originally intended to guard against "unauthorized disclosure (which) could reasonably be expected to cause damage to the national security," the current system permits classification controls to be enforced for any purpose. Guidelines for congressional change of this system are described. Part two of the discussion examines the role of the Interagency Classification Review Committee (ICRC), an organization designed to monitor government classification activities. Although figures, as reported by the ICRC, indicate that classification is decreasing as a result of the committee's efforts, a survey of the ICRC's performance indicates that such is not the case. (KS)

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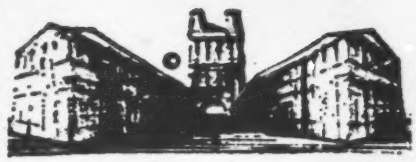

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FREEDOM OF INFORMATION CENTER REPORT NO. 336

EXECUTIVE SECRECY: TWO PERSPECTIVES

In this report, the latest in a continuing series concerning governmental secrecy, two writers provide detailed views. Part I, a general view with specific cases, was written by WILLIAM G. FLORENCE, former security classification policy officer with the Department of the Air Force, presently a consultant on government security policies with the Center for National Security Studies, Washington, D.C. He also acts as a volunteer consultant to Sen. Muskie's Subcommittee on Intergovernmental Relations and Rep. Bella Abzug's Subcommittee on Government Information and Individual Rights. Part II, which focuses on the Interagency Classification Review Committee, was written by RUTH MATTHEWS, an M.A. candidate in the School of Journalism.

THE PRESIDENTIAL SECRECY SYSTEM VERSUS OUR RIGHT TO KNOW

The purpose of this report is to describe a heavy political restraint on communication regarding the affairs of our government. The restraint prevents people from getting facts which they must have to determine their own destinies. It affects the capability of media to inform citizens of what is going on in their government.

This restraint is the secrecy system currently promulgated in Executive Order 11652, subject: Classification and Declassification of National Security Information, dated March 8, 1972. Under this presidential order, Executive branch people may classify official information as Confidential, Secret, or Top Secret, and protect it from unauthorized disclosure **in the interest of national defense or foreign relations.** Actually, those two interests were quickly obliterated in the order by being given the collective, catch-all, shorthand term "national security." Thus, the operational requirement is that official information shall be classified for secrecy if **"its unauthorized disclosure could reasonably be expected to cause damage to the national security."**

Any government effort to protect information which really would damage or impair the capability of this nation to defend itself would be consonant with our Constitution, and with one of the basic purposes of our existence as the United States. If Executive Order 11652 were designed for and limited to that objective, it would demand the support of all citizens.

But the system established in the order permits imposition of security classification controls on information for any purpose. Hundreds of thousands of individuals in at least 30 Executive branch departments and independent agencies can classify information in tremendous volumes for what they personally consider to be national security reasons. Few of them understand, or could possibly understand, the damage factor that is stated in the order as the basis for classification.

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The writer has observed that the reasons most commonly used today for classifying information are —

a. The information was new to the classifier;
b. Desire to keep it out of newspapers;
c. Reluctance to "give it away";
d. "I don't see foreign people giving us this kind of information";
e. "A foreign government might not like my saying what its officials did";
f. "Disclosure might lead to examination of my program";
g. Association of separate non-classified items;
h. Repeated use of old information without trying to declassify it;
i. Personal prestige; and
j. Habitual practice, including clerical routine.

A particularly strong reason why many individuals use the security classification system for information **they want to control** is their belief that some federal law protects information with a classification on it, and that anyone who discloses such information without their approval can be punished under the law.

That belief is based on the erroneous statement in Executive Order 11652 that wrongful disclosure of classified information "is recognized in the Federal Criminal Code as providing a basis for prosecution." But that threat is a deliberate misrepresentation of law. There is no statute providing any such sanction. In a letter to the writer last July, the Department of Defense stated that the threat "is admittedly an attention getting device." Yet millions of people have been deceived about the threat and are convinced that it is valid.

Incidentally, the Department of Justice is trying now to have Congress enact a law that really would make it a crime for an individual to disclose classified information to a so-called unauthorized person. The proposal is section 1124 of Senate bill S-1, the bill which would revise the entire Federal Criminal Code. Section 1124 has been dubbed the "official secrets act." It would apply to journalists if they have knowledge of any classified information that was officially given to them.

How did this presidential secrecy system come about? The quick answer is that we did it to ourselves. Over 30 years ago, a contagion of World War II Army and Navy military secrecy practices was allowed to seep into almost every civilian agency of government. The practice spread throughout the land during those historic battles against alleged Communist agents during the Cold War years.

In 1951, President Truman made the original Army and Navy security classification system directive, for the first time, upon the entire Executive branch by promulgating Executive Order 10290. President Eisenhower replaced that order with Executive Order 10501, which was replaced with the current order in 1972.

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But there has been no change in the basic military system of permitting individuals to classify information and mark documents as Confidential, or higher, according to their choice. Perhaps over 20 million documents in use today have classification markings to keep them secret from the public.

And there has been no substantial change in the utterly unrealistic procedure for declassification. Once a classification is put on a document, with no specific provision for timely cancellation of that classification, the document must be kept and handled in secrecy until some especially designated person:

a. Can be hired or otherwise made available, and
b. Has time enough to review the document for possible declassification, and
c. Also has common sense enough to cancel the classification.

It is the latter bureaucratic obsession with security classification secrecy that keeps security classification markings on about one billion pages of this nation's historical records in the National Archives.

The widespread effect of the President's order for secrecy, in the name of national security, is also reflected by the following facts:

a. Over 12,000 industrial and academic locations in the United States have a "facility security clearance" granted by the Department of Defense for access to information bearing security classification markings.

b. Perhaps as many as eight million people in government, industry, and academic institutions are working with information which has a classification marking of Confidential or higher.

In addition to other ills that result from the President's secrecy system, hundreds of millions of dollars are spent in an effort to apply and enforce rules for precluding unauthorized disclosure of information bearing security classification markings. The funds are expended on the basis of assigned markings, regardless of whether the information has already been disclosed.

Why is the presidential secrecy system permitted to exist?

The majority of American people adopted the false philosophy of secrecy which was promoted after World War II. This stemmed from a fear complex, the fear of some danger that could not be met by existing statutory or constitutional capabilities. A security classification was exactly the right kind of label to designate information for secrecy so as to protect the "national security" from any imaginable threat, foreign or domestic.

Concurrently, the security classification system was equated with patriotism. People who supported security classification secrecy met the national security loyalty test. Anyone who violated a security classification could be branded a threat to national security, and could be considered disloyal.

This security classification hoax has been accepted for years by people in all walks of life. Its proponents include publishers, journalists and educators. Included also are a great many industrialists and others who profit from security classification secrecy.

It should be remembered that an individual who works under the security classification system's rules can use them for any secrecy purpose that seems advantageous. Some highly publicized abuses of governmental power committed under cover of the executive order classification system, including the Cambodia bombing and the Huston plan for surveillance of citizens, have been extremely serious for the nation. In that context, all citizens have a problem with the presidential secrecy system, if they want an open government.

Here are three requests for access to some documents that the Departments of Defense and State denied just a few days ago. They show the day-to-day use of the classification system.

On March 2, 1975 I requested access to a document that was produced July 19, 1974 by the Department of Defense Documentation Center in Alexandria, Virginia. The title is Technical Abstract Bulletin Indexes. It contains brief non-classified abstracts of scientific and technical studies made by Department of Defense contractors and other sources. The publication could be used by an individual to order copies of such technical reports as would be helpful in his own endeavors.

The documentation center notified me March 24, 1975 that "your request to inspect this document is denied because it is a Confidential document." The letter did not explain how a document containing only non-classified information could qualify for Confidential classification secrecy. But no explanation is expected by those of us who have observed such absurd secrecy practices, in the name of national security, throughout the Department of Defense.

Next is a case of a request dated February 19, 1975 for access to the Background Paper on Vladisvostok SALT Agreements which the Secretary of State used November 25, 1974 in giving briefings to a great many people about the agreements. The Department of State ruled March 5, 1975 that the document is not available for inspection. The reason given was that some information is "classified on the ground that attribution of these remarks to the Secretary of State could damage the national security." There was no amplification or explanation whatsoever.

The third case is a request of March 1, 1975 for access to four of the Vietnam Study documents known as the Pentagon Papers. They contain information about efforts that our government made up to 1967, through many other governments, to negotiate with North Vietnam on ending the war in Southeast Asia.

Those four documents had not been released to anyone by Dr. Ellsberg, but they were listed in the indictment against him because he had reproduced them along with other documents which he did release. All four were still marked TOP SECRET when the government introduced them into evidence during the Ellsberg-Russo trial, January, 1973. There they became public records. Several months later, after the trial had ended, the judge permitted the government to remove the documents from the court's public files.

But on March 31, 1975, the request for access to the volumes was denied by the Department of State. The letter said that material in them is classified because:

a. It includes information furnished in confidence to United States officials by officials of other governments, and

b. Some portions reveal United States Government communications describing actions and-or inactions of officials of other governments who are currently in office, and

c. Release of the information would damage the ability of the United States to conduct its foreign affairs.

Here a Department of State official ruled that some interchanges made in confidence with foreign officials many years ago, and some facts about foreign officials, shall keep the American people from access to important historical information. Aside from the Federal District Court ruling in 1973 that the documents were public records, the question arises: When did the American people authorize an Executive branch official to commit this nation to life-time secrecy on the effort we made to extricate ourselves from Vietnam? It would seem that if some official acted outside

lawful authority, that is his problem, not ours.

The same principle should apply in the case of many pleas made by the Central Intelligence Agency for secrecy. Officials of that agency who have engaged in actions that the American people would never have condoned cry out that the information must be kept secret or their dirty work will be exposed.

Finally, the same principles did apply in the cases of Egil Krogh, John Ehrlichman, and others who claimed that the transgressions they committed under the presidential secrecy system should have been kept secret to protect the national security. But their conviction in court proves that the public's right to know can prevail **under law**, even if it has no chance under E. O. 11652.

What is being done to eradicate this devotion to the cultism of national security secrecy?

First, the Executive branch and the industrialist supporters of the military security classification system must be discounted, as they all favor bureaucratic secrecy.

Second, Congress has belatedly, but resolutely, initiated action toward **security classification reform**. Congress took a big step in November, 1974, in moving to preempt the President's self-assumed free-wheeling classification authority, when the President's veto was overridden and section 552, title 5 of the United States Code was amended to permit a federal judge to decide the validity of a security classification on an official record if an individual's request for access to it is denied.

That section of law is known as the Freedom of Information Act. But that is really a misnomer. The section is part of the "housekeeping" code on the administration of records. Section 552 exists to require each Executive branch agency to do four things:

a. Publish information in the Federal Register regarding its organization, functions, operational procedures, and its rules of general applicability,

b. Make available for public inspection and copying (1) manuals and instructions that affect a member of the public, (2) final opinions made in adjudicating cases, and (3) all statements of policy and interpretations not published in the Federal Register,

c. Make available for public inspection and copying current indexes of matters referred to in a and b above, and

d. Make any other existing official record available to a person who requests access to it or a copy of it, unless the record is exempt from **mandatory** disclosure under the law. (Note that official records **properly classified under Executive Order 11652** constitute one of the nine exemptions from **mandatory** release.)

A more appropriate title might be "The Availability of Records Act." No agency is required to disclose **information**, as such, or to create a record containing information for a requester. Furthermore, an agency may charge a requester a sizeable fee to search for a record and another fee to reproduce it if a copy is desired.

Although the amendment of the FoI Act to authorize judicial review of a classified document was truly a landmark legislative action, Congress did nothing to eliminate unnecessary controls on information that agencies maintain under the presidential secrecy system. As the three examples of requests for access to records show, the individuals who denied them applied the same bureaucratic secrecy philosophy that has existed in the Executive branch for 30 years.

Of course, a denial can be appealed to a higher-level authority in the agency. And it is true that if an appeal is denied, the requester can enter suit in federal court to compel the agency to make a record available. The judge might even require the government to pay the requester's litigation costs. But that would be only one of millions of records that agencies are keeping secret from the public.

On the other hand, the judge might agree with the agency's reasons for not releasing the record. A requester could waste a great deal of time and money in getting nothing.

In the final analysis, Congress has not set any limitation on Executive branch secrecy. All that Congress said in amending the FOI Act about security classification secrecy is that a Federal judge can decide whether the security classification on a specific document meets whatever secrecy criteria the President has published in an executive order.

There is another major move under way in Congress. The plan is to **dry up false secrecy at the source** by enacting a security classification reform statute.

It would seem best, in my view, for Congress to enact the most simple classification law that is practicable, in exercising its constitutional responsibility to provide for the national defense. The President would act as both Chief Executive and Commander-in-Chief in implementing the law. I suggest that:

a. Congress specify a legal designation for official government information, the unauthorized disclosure of which could reasonably be expected to cause damage to the national defense. The designation could be "Defense Data." That would compare in principle with the single designation, "Restricted Data," that is specified and defined in the Atomic Energy Act. As in the case of Atomic Energy "Restricted Data," Congress would permit the President to set rules for different indicators or markings on "Defense Data" according to the degree of protection required.

b. Congress could define the **damage** that would be expected to result from an unauthorized disclosure which should be avoided. This could be far more successful than trying to define information to be protected. In defining "damage," Congress could limit use of the specified secrecy designation, "DEFENSE DATA," to the following:

> (1) Disruption of foreign relations affecting the defense of the United States.
>
> (2) Compromise of a current operational plan or contingency plan for the defense of the United States against attack, including the intelligence estimate.
>
> (3) Compromise of a current intelligence operation important to the defense of the United States.
>
> (4) Compromise of an official cryptologic system important to the defense of the United States.
>
> (5) Disclosure of official information regarding a technological development of the government that is primarily useful for military purposes, which disclosure itself would eliminate a known technological advantage of the United States important to the national defense.
>
> (6) Disclosure of official information which would make a current weapon system or a military operation vulnerable to successful hostile attack or other successful countermeasures.

c. Congress would set the basis for the President and heads of specified agencies to designate information as "Defense Data" for protection in the interest of national defense.

d. The law itself could automatically declassify information after a brief period of time, possibly after three

years, if declassification is not accomplished beforehand by the Executive branch. But agency heads would be authorized to defer automatic declassification on limited types of information under a requirement that Congress be notified or a deferral that would keep an item in secrecy for more than some period such as five years.

e. The Comptroller General of the United States could be designated, and be given the necessary resources, to monitor actions taken by agencies to implement and adhere to policies established by Congress. This would be on the same basis that the Comptroller General monitors other actions of executive agencies.

That type of legislation would define and limit drastically the authority of the Executive branch to try to keep official information secret in the name of national defense. The criminal code would continue as the basis for criminalizing such disclosures of national defense information as Congress chooses to make unlawful.

Both Senator Muskie (D-Me.), Chairman of the Senate Subcommittee on Intergovernmental Relations, and Representative Abzug (D-N.Y.), Chairwoman of the House Subcommittee on Government Information and Individual Rights, plan to hold hearings on proposals for security classification reform in 1975. I know that they would welcome advice and support from every person who is interested in being informed of what is going on in the Federal Executive branch.

THE INTERAGENCY CLASSIFICATION REVIEW COMMITTEE

> The many abuses of the security system can no longer be tolerated. Fundamental to our way of life is the belief that when information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and eventually incapable of determining their own destinies.

This statement by President Richard M. Nixon on the introduction of Executive Order 11652 went far toward paraphrasing the words of James Madison: "A popular Government without popular information or the means of acquiring it is but a prologue to a farce, a tragedy, or perhaps both."

Nixon, however, added an extra, ambivalent fillip.

> Yet, since the early days of the Republic, Americans have also recognized that the Federal Government is obliged to protect certain information which might otherwise jeopardize the security of the country. That need has become particularly acute in recent years . . . as world peace has come to depend in large part on how that position is safeguarded . . . in an era of delicate negotiations in which it will be especially important that governments be able to communicate in confidence.
>
> Clearly, the two principles of an informed public and of confidentiality within the Government are irreconcilable in their purest forms, and a balance must be struck between them.

On Jan. 15, 1971, National Security Study Memorandum 113 outlined a review to be made for possible changes in E.O. 10501, which dealt with classification matters. The outline was classified "secret" although it contained no information relating to foreign policy or national defense.

John Ehrlichman was responsible for the study and named William Rehnquist to head it. Members of the committee were representatives of the Central Intelligence Agency, the National Security Council (NSC), the Atomic Energy Commission and the Departments of State and Defense — the big classifiers. David Young did much of the work on the final version of EO. 11652, the revision of 10501 that was announced by Nixon on March 8, 1972, effective June 1. Young later became director of the Interagency Classification Review Committee (ICRC) established by the directive and charged with helping the NSC to monitor the classification system.

On July 15 or 16, 1971, Ehrlichman informed Egil Krogh that Nixon wanted the "entire resources of the executive branch" brought to bear on an "urgent assignment in response to the unauthorized disclosure of the Pentagon Papers."[1] Ehrlichman assigned David Young to Krogh's unit, later called the Plumbers.

> Mr. Ehrlichman instructed me that the activities of the unit were to be impressed with the highest classification and kept secret even within the White House staff. Mr. Young and I received the most sensitive security clearances . . .
>
> He (Nixon) discussed the creation of a new security classification which would condition access to national security information upon advance agreement to submit to polygraphing.[2]

In the three years since 11652 and the accompanying NSC Directive of May 17, 1972, "Governing the Classification, Declassification, Downgrading and Safeguarding of National Security Information," the cast of characters has changed. David Young has left the ICRC and the White House, as have Ehrlichman and Nixon. ICRC Chairman John Eisenhower resigned. Congressman William Moorhead (D-Pa.), who fought for amendments to the Freedom of Information Act and for statutory classification reform has gone to another subcommittee chairmanship. Staff director William Phillips, involved for 20 years in classification reform, has left his position on the House Government Operations Subcommittee.

In their places are National Archivist John Rhoads, acting chairman of the ICRC; William L. Brown, ICRC executive director; Rep. Bella Abzug (D-N.Y.), chairperson of the Subcommittee on Government Information and Individual Rights. By April, 1975, Phillips had not been replaced. The White House is no longer involved in revamping the classification system; initiative has passed to the Congress — particularly to Rep. Abzug in the House and Sen. Muskie (D-Me.) in the Senate. Brown said Rhoads may soon resign the chairmanship of ICRC; the White House is looking for a suitable replacement. The cast changes; the issue remains.

The operation and criticisms of EO. 11652 have been discussed in **FoI Report** No. 332.[3]

In the present report the focus is on the ICRC.

History

The military services have always had classification systems to protect information regarding weapons development, troop placement and movements and other military defense information.

At the commencement of the Cold War, President Truman

found it necessary to protect the confidentiality of other types of information.A study group recommended the application of the military information classification system to all Executive branch information deemed sensitive to the national security. E.O. 10290 was issued, directing the establishment of the system, extending classification authority to nonmilitary agencies with a role in national security matters. Any agency could classify information. Institutional executive secrecy was born, independent of any statutory basis. The rationale for the order was thought to be the President's constitutional duty to protect the national interest and, also, the implied powers clause.

Limitations on the order were recognized in the House Government Operations Committee; "foremost among these is the well settled rule that an executive order or any other Executive action, whether by formal order or by regulation, cannot contravene an act of Congress which is constitutional." [4]

The executive order, concluded Harold Relyea, analyst for the Congressional Record Service of the Library of Congress, could be grounds for dismissal or removal from one's job, but violation of such an order was not a legal offense. Prosecution for mishandling classified information could be made only under the espionage provisions in U.S. Code, Title 18 and the Atomic Energy Act of 1954. No statutes have any specific provisions sanctioning broad classification powers as a legal, executive tool. [5]

At the height the McCarthy era, in 1953, President Eisenhower revamped the executive secrecy system somewhat with E.O. 10501. It decreased the number of executive agencies permitted to classify documents by eliminating those agencies with no direct responsibility for national defense from coverage by the order. With some amendments, little if any congressional challenge or protest, and no public recourse for information withheld, E.O. 10501 prevailed to protect the interests of national defense until 1972.

E.O. 11652

The public had been educated by the mass media about government secrecy because of the Pentagon Papers case. It was not inclined to be sympathetic to any further secrecy attempts, but an executive order does not require popular approval — or any approval. In order to protect interests of national defense or foreign relations, E.O. 11652 was written in the tense atmosphere surrounding the Pentagon Papers release.

The order claims to derive its operational basis for classification from the Freedom of Information Act of 1966, which exempts from mandatory disclosure material "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense of foreign policy and are in fact properly classified pursuant to such an Executive order." [6]

The NSC is charged by the order with protecting all such classified information. The ICRC was created by the order to monitor the operations of the close to 40 [7] executive agencies with classification authority to insure they are following the instructions of the order.

At least three major problems are created by the order: 1. It calls for classification of material relating to national security and foreign relations, language that conflicts with the FoI Act — which talks about national defense and foreign policy. 2. Does the Executive or the Congress have the constitutional right to determine what information shall be classified and how to operate a classification system and administer it? 3. Procedurally, how can the ICRC satisfactorily perform its monitoring function?

Much controversy exists between the Executive and

Legislative branches of government over these issues. The classification system now in operation withholds masses of information from the public and other branches of government with no concurrence for such withholding from the representatives of the people. Most critics of the present system agree that some information must be withheld from public disclosure because it bears on national defense. But massive amounts of information are systematically withheld at the officials' personal discretion and judgment of the sensitivity of such information, often according to guidelines issued by his agency. (Agencies issue policy guides to cover their basic classification policy, program guides on implementing policy in entire programs and local guides to cover detailed operations within programs.) [8]

Never has a statement defined the national defense, the national security or foreign relations. Never has the Executive branch been given the authority, either by the Constitution or Congress, to decide such matters. The system, then, its form and operation, is the most basic point of contention in the battle over classification authority.

The ICRC

The ICRC is composed of one representative each from the Departments of State, Defense and Justice, the CIA, the NSC, the National Archives and a chairman appointed by the President. All these representatives are from the biggest classifying agencies; there is no member who does not have a vested interest in the classification authority and the protection of information it generates or receives. The ICRC is allowed to have such an unbalanced membership because it is a committee of an agency, not an advisory committee, although it does perform some advisory functions. (Under the Federal Advisory Committee Act, the membership would be required to be balanced between those with classification authority and those without.)

The ICRC is required to meet no less than monthly on a regular basis; Brown says they usually meet once a month. The subject of the meetings is policy; if there is an appeal before the committee, the appeal is decided. Only four classification decisions by the agencies have been appealed to the ICRC this year. Brown said this is proof the system is working. But it may be proof the system is not working, either because few persons are aware of ICRC existence (the executive position) or because the system is inherently unworkable (the congressional opinion).

Policy matters discussed revolve about how to make the ICRC work better to fulfill the executive order directives. What is the policy? In an interview, Brown said, "The policy is the overall implementation of the order and how the order should be implemented." Did that mean future areas of improvement, a general goal the ICRC is moving toward or a long-term goal? The only goal, he answered, is full implementation of the executive order. Can an example be found as to what policy measures are discussed at the meetings? No, Brown gives his reports to the ICRC orally and says he usually does not even write or keep notes for himself on his report so he couldn't think of an example offhand. [9]

So the ICRC meets, usually for a full day, usually once monthly, in the Roosevelt Room at the White House to discuss the few appeals made to the ICRC and policy matters as defined in the order.

The order directs the ICRC to perform three functions:

1. to oversee agencies to make sure they comply

with the provisions of the order and implement the directives the President issues through the NSC.

2. to receive, consider and act on suggestions and complaints regarding the administration of the order, and to consult with the affected agencies to make sure appropriate action is taken on the complaints, and

3. to receive from the agencies any material needed to carry out its functions.

The executive order provides the means whereby the ICRC can oversee the departments' compliance. Each department is charged with getting ICRC approval of its regulations on classification under E.O. 11652, assigning a senior staff member to ensure compliance and implementation, to chair a department to act on suggestions and complaints to the agency, and to educate employees concerned with handling classified material about the provisions of the order. Such education includes reminding employees "of the provisions of the criminal code and other applicable provisions of law relating to penalties for unauthorized disclosure" although no such laws exist except AEC regulations and some parts of the espionage law.

ICRC Performance

The ICRC's ability to monitor the massive classification system has admittedly been nominal.[10] The staff of the ICRC, until October, 1974, consisted entirely of Brown and his secretary. The staff of the National Archives and other agencies are drawn on for support. Phillips said that teams of reservists spend summers declassifying documents.

In October, 1974, Brown was given a program assistant who helps in preparing charts, graphs and other items. Eight new staff members have been approved by the Office of Management and Budget and will be hired immediately if Congress approves them in the budget. Rhoads is acting chairman, and like the other committee members, takes an active role in ICRC affairs only at the monthly meetings. All the members are full-time employees of the agencies they represent with other full-time duties.

The workload in monitoring between 37 and 40 agencies is tremendous for Brown, his assistant and his secretary. The system of monitoring that has evolved is confined to reviewing quarterly statistical reports filed by the agencies with closer inspection of a few of the big agencies that Brown has decided bear closer watching than the others; he declined to name them.

Brown, a former lawyer for the AEC, reviews statistical reports in five areas:

1. **"Report of Authorized Classifiers."** Authorized classifiers are listed here by name and title or by title and organization, with the total for each agency. Rhoads said an effort is made to tightly control the number of classifiers with the hope that the total number of classified documents will decrease yearly and the quality of classification decisions will improve.[11]

2. The **"Report of Classification Abuses"** filed by each classification agency notes cases of under- or over-classification, unnecessary classification, improper marking or improper exemption from the General Declassification Schedule; in other words, all the cases of classification abuse discovered by an agency's inspection program.

ICRC views the abuse report as a measure of the effectiveness of the classification education program within an agency. If a specific type of abuse appears or a department within an agency appears to be repeatedly abusing the system, the agency's Departmental Review Committee is expected to correct the situation. Beyond that, ICRC suggests ways to improve matters. ICRC also has its own day-long training program, but it has no power to correct any abuse. Repeated abuses by an individual may cause that person to be reprimanded by his agency, but "repeated" is a matter of judgment. Brown can ask an agency to correct abuses and did so four or five times in February, 1975, more than an average month because he had finished examining the December, 1974, quarterly reports.

The FoI Act has made some attempt to remedy this hole in the executive order by subjecting personnel who "arbitrarily or capriciously" withold information to disciplinary action by the Civil Service Commission, including up to 60 days' suspension of pay. Such discipline is not mandatory, nor is "repeated abuse" defined.

3. The third report is **"Report of Unauthorized Disclosures,"** detailing the communication or transfer of classification to "unauthorized" persons. The reports listed only 10 such leaks in 1973, all to the press.

A problem here is that "documents" are defined by the order and it is documents the order seeks to protect, not information. In other words, the physical transfer of a piece of paper with a classification marking on it to a person without the proper security clearance and without need for the information is prohibited but verbal transfer is not. In this way, Secy. of State Kissinger, for instance, has been able to read such documents to the press, transferring the information but keeping the document in his own possession.

4. **"Mandatory Declassification Review Requests"** logs the number of declassification requests made under section 5 of the order. Section 5 schedules automatic declassification, so all documents are declassified in from six to 10 years after the date of origin unless marked otherwise. The title "mandatory review" is somewhat misleading since a document with classification protection of longer than 10 years is reviewed only when a request is made for the information. If a document is less than 10 years old and the originating agency has no objection, the ICRC has authority to review its classification.

5. The last report from the agencies studied by Brown is the **"Quarterly Summary Report"** — a statistical summary of documents classified by an agency in the quarter according to the level of classification and the declassification schedule. Some agencies are allowed to make their report on the basis of a sample rather than an actual count of classified documents.

Documents need not follow the 6-8-10-year automatic declassification schedule detailed by the order; they may be marked for advance declassification or delayed declassification, by stamping the declassification date on the document at the time it is originated. The AEC, in a public relations pamphlet "Understanding Classification," says, "The more time we can buy the better."

Phillips, while employed in Moorhead's office, said that the ICRC is useful in that it does compile statistics and enable a measure of the amount of classified information that is being produced yearly.

The questions remain: — how accurate are the reports, and how thoroughly are they monitored? Brown and his tiny staff find it physically impossible to go into an agency to check abuses of the reporting system. Statistical juggling by an agency could escape an untrained reviewer. Abuses have been found that Brown has told the agencies to correct and he says such admonitions are sufficient. Agencies are aware that Congress is watching them in the House and Senate oversight hearings, he says, and that, too, serves to keep

agencies honest even in the absence of any regular overseer or threat of punitive action.

ICRC also operates a small orientation and training program for classifiers to supplement the agency programs. The most recent was a one-day symposium in April, 1974, in which every classifying agency participated. ICRC publishes a pamphlet entitled "Know Your Rights to Mandatory Review of Classified Documents." The pamphlet suggests the "requests should be made for specific documents rather than all documents on a given topic."

The ACLU, FoI Clearinghouse and the Center for National Securities Studies also suggest requesting documents in the most specific terms possible to prevent bureaucratic delays. But they also suggest asking for any other documents relating to the subject in order to prevent an agency from releasing only the documents one knows were available and not other relevant documents. ICRC asks that agencies enclose its pamphlet whenever a request for declassification is denied so the requester will know how to appeal a decision.

The figures, as they are presented by the ICRC, give the appearance that the committee is functioning exactly as intended; that is, classification is decreasing as a result of its efforts. But such is definitely not the case, as the accompanying material by William Florence attests.

FOOTNOTES

1. Egil Krogh, "Statement of Defendant on the Offense and His Role," deposition to U.S. District Court, Washington, D.C., January, 1974, p. 1.
2. **Ibid.**, p. 3.
3. Jeanni Atkins and Belvel Boyd, "Classification Reexamined," **Freedom of Information Center Report** No. 332, January 1975.
4. U.S. Congress. House. Committee on Government Operations. "Safeguarding Official Information in the Interests of the Defense of the United States." (Washington: U.S. Government Printing Office, 1962), pp. 31-32, quoted in Harold C. Relyea, "The Evolution of Government Information Security Classification Policy: A Brief Overview (1775-1973)," in U.S. Congress. Senate. Subcommittee on Intergovernmental Relations of the Committee on Government Operations. "Government Secrecy," Hearings, May 22, 23, 29, 30, 31 and June 10, 1974, (Washington: U.S. Government Printing Office, 1974) p. 856.
5. Relyea, **op. cit.**, p. 856.
6. 5 U.S.C. 552, Sec. b.1.a. and b.1.b.
7. William L. Brown said there are "about 40" agencies and offices with classification authority. The House and Senate hearings specify 37. Brown declined to name the additional three.
8. U.S. Government, Atomic Energy Commission, Division of Classification, "Understanding Classification." (Washington: U.S. Government Printing Office, 1973).
9. Interview with William L. Brown, Executive Director, Interagency Classification Review Committee, Washington, D.C., March 21, 1975.
10. John Rhoads, testimony before Senate Subcommittee on Intergovernmental Relations, Committee on Government Operations, May 20, 1974, in U.S. Congress. Senate. "Government Secrecy," **op. cit.**, p. 80.
11. **Ibid.**, p. 81.